

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Feb 24, 2023**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BILLY EDWARD TOYCEN,

Plaintiff,

v.

YAKIMA COUNTY JAIL, CITY OF  
YAKIMA MUNICIPAL COURT,  
YAKIMA COUNTY DISTRICT  
COURT, YAKIMA COUNTY  
SUPERIOR COURT and U.S.  
DISTRICT COURT,

Defendants.

No. 1:22-cv-03182-MKD

ORDER DENYING LEAVE TO  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING ACTION

By Order filed January 3, 2023, the Court directed Plaintiff Billy Edward Toycen who had filed this *pro se* civil rights complaint while incarcerated at the Yakima County Jail, ECF No. 1, to show cause why his application to proceed *in forma pauperis* should be granted. ECF No. 8 at 4. In the alternative, Plaintiff was instructed that he may pay the \$402.00 fee (\$350.00 filing fee, plus \$52.00 administrative fee) for this action. *Id.* Plaintiff was cautioned that failure to do

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND  
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1 either would be construed as his consent to the dismissal of this action without  
2 prejudice for failure to comply with the filing fee requirements of 28 U.S.C. §  
3 1914. *Id.*

4 On January 3, 2023, a copy of that Order was mailed to the residential  
5 address Plaintiff provided in Yakima, Washington. ECF No. 8. While prior  
6 documents sent to that address had been returned as undeliverable, ECF Nos. 6, 7,  
7 Plaintiff's copy of the Order was not returned to the Court. It is thus assumed that  
8 Plaintiff received it. Nevertheless, Plaintiff did not comply with the Court's  
9 directives and has filed nothing further in this action. He did not refute the Court's  
10 finding that he had filed three or more actions that were dismissed as frivolous,  
11 malicious, or for failure to state a claim upon which relief may be granted. *See*  
12 ECF No. 8 at 3.

13 The Court finds that Plaintiff has failed to demonstrate that he is eligible to  
14 proceed *in forma pauperis* under 28 U.S.C. § 1915(g), or that he was under  
15 imminent danger of serious physical injury when he filed his Complaint. *See*  
16 *Andrews v. Cervantes*, 493 F.3d 1047, 1055–56 (9th Cir. 2007) (discussing  
17 imminent danger exception to three-strikes rule). Therefore, Plaintiff has lost the  
18 privilege of filing this lawsuit *in forma pauperis*.

19 Although granted the opportunity to do so, Plaintiff did not pay the \$402.00  
20 filing fee to commence this action. As a result, the Court dismisses this case

1 without prejudice for failure to comply with the filing fee requirements of 28  
2 U.S.C. § 1914.

3 Therefore, **IT IS ORDERED:**

4 1. Plaintiff's application to proceed *in forma pauperis*, **ECF No. 2**, is  
5 **DENIED.**

6 2. This action is **DISMISSED WITHOUT PREJUDICE** for non-  
7 payment of the filing fee as required by 28 U.S.C. § 1914.

8 3. The Court certifies that any appeal of this dismissal would not be  
9 taken in good faith.

10 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,  
11 enter judgment, provide copies to Plaintiff at his last known address, and **CLOSE**  
12 the file.

13 **DATED** February 24, 2023.

14  
15 s/Mary K. Dimke  
MARY K. DIMKE  
16 UNITED STATES DISTRICT JUDGE  
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